

## **2009 DRAFTING REQUEST**

### **Bill**

Received: **12/16/2008**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Miner**

This file may be shown to any legislator: **NO**

Drafter: **rkite**

May Contact:

Addl. Drafters:

Subject: **Environment - water quality**

Extra Copies:

Submit via email: **NO**

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### **Pre Topic:**

DOA:.....Miner, BB0267 -

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### **Topic:**

Ballast water permit fees

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### **Instructions:**

See attached

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### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/1	rkite 12/17/2008	wjackson 12/17/2008	jfrantze 12/18/2008	_____	sbasford 12/18/2008		

FE Sent For:

**<END>**

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Ballast water permit fees

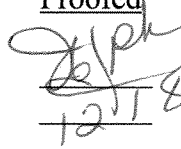
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See attached

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FE Sent For:

**<END>**

## 2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Ballast Water program and fees
  - Tracking Code: BB0267
  - SBO team: Agriculture, Environment and Justice
  - SBO analyst: Andrew Miner AM
    - Phone: 266-1103
    - Email: andrew.miner@wisconsin.gov
  - Agency acronym: DNR
  - Agency number: 370
  - Priority (Low, Medium, High): High
- 
- Intent: 1. Create an annual program revenue appropriation in program 4 of DNR to fund expenditures related to operating the department's ballast water permitting and compliance program. (It should be structured just as the first bullet point on page 3 of the attached issue paper.)
  - 2. Establish an application fee of \$1,200 per ship valid for 5 years and an annual fee of \$345 per ship as outlined on the following page (Attachment 1).
  - 3. Require DNR to promulgate rules by July 1, 2013 to revise these fees (point 3 on the Attachment 1 sheet).
  - See attached issue paper for background information.

**ATTACHMENT 1**  
**IMPLEMENTING A FEE FOR A STATE GENERAL PERMIT FOR BALLAST WATER**  
**DISCHARGES**

The fee could be enacted in Section 283.35 of the Wisconsin Statutes as a new subsection. The components for the Subsection should include the following:

1. An initial application fee of \$1,200 for each ship that is 79 feet or greater in length, that applies for coverage under a general permit issued by DNR or the federal government. This fee shall be in effect until June 30, 2013.
2. An annual fee of \$345 for each ship that is 79 feet or greater in length, that receives coverage under the general permit referenced in part 1. This annual fee will remain in effect until June 30, 2013.
3. The Department shall promulgate rules by July 1, 2013 to revise the fees described in 1 and 2. The new rules shall provide DNR with sufficient funds to assure that discharges of water from vessels that may contain aquatic invasives are controlled and that pollutants are eliminated.

**DEPARTMENT OF NATURAL RESOURCES  
2009-11 BIENNIAL BUDGET  
ISSUE PAPER**

PROGRAM: Water Division  
SUBPROGRAM: Watershed Management  
DECISION ITEM: Ballast Water Permitting and Treatment

Issue:

Wisconsin must improve its efforts to stop the spread of aquatic invasives such as zebra mussels that hitch rides to the Great Lakes in ballast water tanks from cargo ships. DNR staff has begun drafting a general discharge permit for ballast water under existing statutory authority. The permitting process will better protect Wisconsin waters from the invasion of new invasive species that would otherwise be introduced through ballast water from international trading. Wisconsin is also proposing construction of a demonstration barge treatment system at the Port of Milwaukee to cleanse ballast water from ships that use that port, but do not possess the necessary shipboard technology to cleanse ballast water.

Because there is no fee authority for a general discharge permit and any fee revenue associated with a specific discharge permit must be deposited in the general fund, DNR will not have the fiscal or staff resources available to implement ballast water permit requirements that will accompany a general permit issued by the U.S. Environmental Protection Agency (EPA) in December 2008. Without these fiscal resources, additional invasive and exotic species will be brought into Wisconsin waters without control. This request will allow DNR to charge ballast water dischargers fees to issue permits and monitor permit compliance.

Request:

The Department proposes to establish an annual ballast water permit fee and an associated application fee identical to those already established by the State of Minnesota. This rationale for matching Minnesota's fees is that Wisconsin and Minnesota share state waters in the Duluth-Superior harbor, therefore it is advantageous for both the states and the shipping industry that will be affected by this program to have uniform technical, administrative, and fee-related requirements.

Currently, Minnesota charges a \$350 application fee for 5 years of general permit coverage for each ship—both oceangoing (a.k.a. "salties") and lake freighters that operate within the Great Lakes (a.k.a. "lakers"—that visit Great Lakes harbors under their jurisdiction. This fee will soon be increasing to \$1,200. Minnesota also charges an \$345 annual fee for each ship. The Department also requests authorization to modify the annual fees and application fees by administrative rule in the future (see Attachment 1 for more details).

If the fees were enacted as soon as July 2009, it will allow the Department to collect fees and operate the program as early as the end of the 2009 shipping season or the beginning of the 2010 shipping season.

The request will involve revising Chapter 283 of the statutes to authorize and implement a discharge permit fee program for discharges of ballast waters in Great Lakes waters under Wisconsin's jurisdiction. The request would provide authority to use fee revenues for permit issuance and compliance activities and potentially for cost-sharing the operation of a demonstration off-ship ballast water conveyance and treatment system.

The Department also requests 3.0 FTE and spending authority of \$213,800 PR in FY2010 and \$250,200 PR in FY2011 to implement a compliance monitoring and inspection program for ships that could discharge ballast water in Wisconsin ports.

A projected condition statement is included in the table below. It assumes that 700 ships per year will be subject to the fees and that the application fee will be set at \$1,200, thus matching the application fee that the State of Minnesota will soon be charging.

<b>BALLAST WATER FEE PROGRAM</b>				
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>
<b>Beginning Balance</b>	0	867,700	859,000	846,300
<b>Revenues</b>				
Application Fees-5 yrs. (est. 700 ships @ \$1,200)	840,000			
Annual Fees (est. 700 ships @ \$345/yr.)	241,500	241,500	241,500	241,500
Total Fees	1,081,500	241,500	241,500	241,500
Total Available Revenue	1,081,500	1,109,200	1,100,500	1,087,800
<b>Expenditures</b>				
Salaries--3.0 FTE wastewater specialist-adv.	101,000	134,700	137,400	140,100
Fringe Benefits (48.59% of salary)	50,100	66,800	68,100	69,500
LTE salaries (for 2 LTE appts./yr. at 1,040 hrs./appt).*	31,200	31,200	31,200	31,200
LTE fringes (27.23% of salary)	8,500	8,500	8,500	8,500
Supplies (\$3,000 per FTE)	9,000	9,000	9,000	9,000
One-time costs (for 4 computers @ \$3,500 each)	14,000			
Total Expenditures	213,800	250,200	254,200	258,300
<b>Account Balance</b>	<b>\$867,700</b>	<b>\$859,000</b>	<b>\$846,300</b>	<b>\$829,500</b>
* LTEs would provide assistance during peak periods of the shipping season, including assistance with permit issuance as well as permit database entry or maintenance.				

This Department also advocates that \$3.5 million be allotted in general obligation bonding authority to the Department of Transportation Harbor Assistance Grant program to directly fund the Port of Milwaukee off-ship barge treatment facility as a demonstration project.

Appropriation Options:

There are a couple of options to consider for establishing a budgetary mechanism for the revenues and expenditures associated with a ballast water program.

- Establish a separate, program revenue appropriation where all ballast water fee revenues would be deposited and from which ballast water program expenditures would be funded.
- Deposit ballast water fee revenue into the water resources account of the conservation fund. Further, establish a segregated revenue appropriation within the water resources account from which all program expenditures would be funded. The rationale for this option is twofold:
  - The Department's current AIS efforts are primarily funded from appropriations within the water resources account (WRA). Since the objective of the ballast water program is to address AIS problems, it would be consistent to house the new appropriation within WRA.
  - The WRA has developed a structural deficit over the past several fiscal years and this deficit is projected to continue into the foreseeable future. Therefore, if the ballast water program generated revenues in excess of expenditures, any surplus revenues could go toward mitigating the structural deficit.
- Blend the preceding two options by establishing a separate program revenue appropriation, but stipulate that on June 30 of each fiscal year the unencumbered positive balance in this appropriation account shall be transferred to the water resources account. The rationale is that the WRA would be the beneficiary of excess revenues from the ballast water program but would be insulated from any problems that would occur in the event that a deficit forms in the ballast water appropriation.

#### Background:

There are currently at least 162 aquatic nuisance species in the Great Lakes, including the zebra mussel, sea lamprey and spiny water flea. Recently, a new aquatic virus was discovered in the eastern Great Lakes and has already been responsible for the deaths of thousands of fish. On average, a new non-native species is introduced to the Great Lakes every eight months. Aquatic Invasive Species (AIS) cost the nation billions of dollars in damages each year, are a burden on the national economy and strain Great Lakes state/municipal budgets. Costs associated with zebra mussels alone have been estimated at over \$1 billion. AIS pose a threat to human health and cause immeasurable ecological damage. Further, AIS are injurious to our region's sport and commercial fisheries and associated tourism and recreation. The economic impacts of AIS in these cases, is very difficult to calculate. The problem of AIS continues to grow. In fact, since September 2005, several new AIS have been discovered in the Great Lakes region alone. These include, for example, the bloody red shrimp (*Hemimysis anomala*), the New Zealand mudsnail and the fish disease viral hemorrhagic septicemia (VHS). Additionally, existing invasive species such as the quagga mussel have spread to Lake Superior and Lake Mead in the southwestern USA illustrating how invasive species can move from one area of the country to another.

The Department has operated an AIS program for many years that deals primarily with controlling the spread of invasives that are already in Wisconsin or Great Lakes waters rather than stopping them before they reach Wisconsin. The AIS program relies heavily on getting the message out to transient boaters and other vectors of transport through information, education and outreach activities and watercraft inspection efforts conducted by agency staff and by volunteers through the Clean Boats, Clean Waters program. Inspectors have been trained on how to properly clean boats and instruct boaters how AIS can be inadvertently transported between waterbodies. This one-on-one contact by inspectors helps change boater behavior in order to stop inadvertent transport of AIS between water bodies. The DNR also administers AIS funds as a cost-share grant program to address AIS problems.

The discharge of ballast water from international shipping is a major pathway for the transfer of potentially harmful aquatic organisms and pathogens around the world. Ballast water is taken on and released by a vessel to maintain trim and stability when loading and unloading cargo. When ballast water is taken onboard, any organism less than about 1 cm in size in the vicinity of the intake may also be ballasted into the vessel. All or part of the ballast water, and the organisms in the ballast water tanks, may be discharged in port when a ship takes on cargo or fuel. It has been estimated that 21 billion gallons of ballast water are discharged into US ports each year. Thus, ballast water can be a major pathway of new species introduction to aquatic ecosystems.

It can also operate as a pathway to spread invasives from one Great Lake to another. The proposal that matches EPA general permit requirements provides regulatory control over ships that discharge ballast water and operate only within the Great Lakes (Lakers).

Earlier this year, the sole federal regulatory authority to control ballast water discharges from international ships is exercised by the US Coast Guard through international maritime agreements. This will change later in December 2008 when EPA issues a vessel discharge that will regulate discharge from international ships and "lakers". Before entering the Great Lakes, ships from other nations are required to exchange their ballast water with mid ocean seawater. This management practice is intended to destroy freshwater organisms originating in European, Asian or African ports. US Coast Guard staff routinely boards international ships at the Seaway locks; samples ballast water for salinity; and issues orders for no ballast water discharge to the Great Lakes, if salt concentrations in their ballast water are low. Unfortunately these non-technological control measures are not effective because many organisms adapt to and survive in salt water and freshwater environments (e.g., zebra mussels), are protected in the bottom sediment of ballast tanks, or are in tanks that aren't sampled. Also international ships subject to no discharge requirements are allowed to discharge ballast into the Great Lakes to protect life and maintain stability if conditions warrant (e.g., high waves).

Until 2007, the US Environmental Protection Agency (USEPA) operated under the legal principle that ballast water discharges were exempt from discharge permit requirements under the Clean Water Act. In 2005, EPA was sued in federal court in California and the court ordered USEPA to develop a nationally consistent ballast water permit program by 2008. As a result, EPA has issued a draft general permit to effectively control all ballast water discharges in national waters, including the Great Lakes. Each state with Great Lakes waters has been asked to issue a certification that the permit will meet the state's



water quality standards (Section 401 of the Federal Clean Water Act) which will allow each state to set additional conditions for the permit.

In the past year, legislation has been introduced into both the US House of Representatives and the US Senate to implement ballast water regulation independent of the Clean Water Act. On April 24, 2008, the US House of Representatives passed the Coast Guard Authorization Act of 2007 (H.R. 2830), which strengthens the national program addressing ballast water discharges from ships and sets treatment standards for those discharges. The bill provides the U.S. Coast Guard with broader powers to regulate ballast water and is charged with consulting with U.S. Environmental Protection Agency and other appropriate federal agencies in development of discharge standards and treatment technologies and practices. Under the bill, states are provided with the ability to request the ability to enforce federal standards and assess fines or penalties for violations. States may impose more stringent treatment standards for ballast water discharged to land- or water-based reception facilities. The Clean Water Act is not expressly preempted nor does the bill include a "savings clause" clarifying states' ability to establish their own water quality standards or require discharge permits.

The Council of Great Lakes Governors and Governor Doyle support a federal legislative solution to ballast water management. The Governor has worked through the Council of Great Lakes Governors to expedite passage and influence the substance of the legislation because it represents the best overall control system for the Great Lakes that will be uniformly implemented across all states. Unfortunately, it is unlikely that enactment of this legislation will occur before 2009 due to other priority legislation before Congress. Without adequate control strategies, the introduction of additional aquatic invasive species becomes more and more likely and further threatens Great Lakes and inland habitat and fisheries.

Prior to the final decision regarding the federal law suit against EPA, the Department did not move forward with a discharge permit program because of legal constraints (litigation against EPA for their regulatory exemption of ballast water permitting and against Michigan for their state permitting program), technological capabilities (i.e., what technologies are available to reliably and safely kill exotic species) and economic concerns raised by the shipping industry over the cost of treatment facilities. To address these issues, Governor Doyle convened a group of stakeholders from across the Great Lakes basin to discuss aquatic invasive prevention strategies in June 2006. At the stakeholder meeting, the Department proposed a system of shore-based ballast treatment to prevent introduction of future aquatic invasive species from ballast water. This approach had earlier been proposed in New York but was discouraged by the US Coast Guard due to security concerns while the ships were in the Seaway. After much debate at the June 2006 meeting, there was agreement to conduct a feasibility study for the Port of Milwaukee to answer the technical and economic questions needed to issue permits. The Department agreed to organize and fund the feasibility study which was conducted in 2007. A discussion of the feasibility study and the permitting process is provided in next section.

The law covering the discharge permit process is Chapter 283, State Stats. Permit issuance is governed by administrative rules in NR 200 series. The implementation of a general permit and compliance monitoring program for ships that discharge ballast water into Wisconsin waters involves greater costs to state government to administer the

program. Preventing the introduction of AIS to the Great Lakes could save money to recreational, municipal and industrial interests in Wisconsin.

#### Analysis of Need:

**Ballast Water Discharge Permits.** To address the legal challenge discussed in an earlier section of this document, the Environmental Protection Agency recently public noticed a draft of a general permit to control all discharges, including those from ballast tanks, from vessels greater than 79 feet in length that operate in the nation's waters. The permit contains requirements for implementing best management practices to control ballast water discharges generally in conformance with US Coast Guard regulatory standards. DNR has taken the position that US Coast Guard standards are not sufficient and that treatment requirements should be in place as soon as practicable to stop the introduction and spread of aquatic invasives. As part of the permit issuance process, EPA did require states to issue a certification under Section 401 of the federal Clean Water Act that the proposed permit will not impair a state's water quality standards. Most states will or are issuing 401 certifications that will require vessels to achieve International Maritime Organization standards or more stringent standards during or shortly after the term of the general permit expires. To meet these standards, ships will need to install treatment systems or use off ship systems similar to that proposed for the Port of Milwaukee. In late October 2009, DNR issued a draft 401 certification that proposed that all ships constructed achieve IMO standards by 2012 and that existing ships achieve IMO standards by 2016. The EPA general permit will require ships to utilize off ship treatment immediately if it is available at the Port of Milwaukee. EPA will issue their general permit on December 19, 2008 as required under the Federal Court ordered settlement referenced earlier. The permit covers both international ships and ships that operate exclusively on the Great Lakes.

To date, Michigan is the only state that operates a ballast water discharge permit program that covers only those vessels enter the Great Lakes from International Waters. Minnesota issued a general permit for ballast water discharges for all vessels, both "salties" and "lakers". The Department will work closely with both states to avoid inconsistent approaches and encourage uniform regulatory processes. This is especially important for the twin harbors in Duluth and Superior. DNR's draft 401 Certification contains nearly identical requirements to those contained in Minnesota's recently issued general permit including the requirement for achieving the IMO standards by the dates indicated in the previous paragraph.

Unfortunately, the Department currently does not charge a fee for permit applications, requests for general permit coverage, or permit compliance monitoring by state inspectors. Both Minnesota and Michigan have authority to charge fees for permit issuance and application for their general permit programs. The absence of a revenue source for ballast water permitting will limit the Department's ability to implement a permit program. To address this requires statutory changes, authorization of fees, and appropriation language. It is requested that fees be collected from entities that own ships that operate in Wisconsin waters and have the potential for discharging significant amounts of ballast water.

The Department has allotted approximately 0.2 FTE since December 2007 to develop draft documents and a framework for a general discharge permit for ballast water

discharges and to monitor the work that Minnesota and Michigan are doing to develop and implement discharge permits for ballast water.

**Treatment Technology.** The Department retained the services of Milwaukee-based environmental engineering consultants, Brown and Caldwell, to study the feasibility of off ship treatment of ballast water that is discharged from international ships arriving at the Port of Milwaukee. The Brown and Caldwell study concluded that off ship treatment of ballast water is economically and environmentally feasible at the Port of Milwaukee. The most cost effective option calls for a barge to pull up alongside a ship, connect to the ballast water ports with piping, and pump the ballast water discharge into the barge. The barge would contain treatment and pumping equipment to treat the ballast water before the ballast water is discharged to the environment. Coarse to very fine screens would be used to separate organisms from the water. Ultraviolet light systems, often used for conventional wastewater treatment, would be installed to destroy living organisms in the ballast water. These technologies would have the ability to remove or destroy a wide range of aquatic invasive species, from large, visible fish species down to microscopic viruses and pathogens. The estimated capital cost for the barge treatment system is approximately \$3.5 million. Of this amount, approximately \$2.4 million is estimated for acquiring a used single-hull barge and transporting it to the Port of Milwaukee from the U.S. East Coast. Total annual costs are estimated at \$517,000 for operating and maintaining the treatment barge and positioning the barge with a tug boat to take on ballast water. We believe that this cost would be borne by the Port of Milwaukee and the ships that would discharge ballast water to the barge.

Further study is needed including ballast water constituent and treatability analyses, design criteria development, and preparation of design drawings for the conveyance and treatment system that was identified in the original study. If this work is completed, a demonstration project could be constructed in 2009 or 2010 to provide treatment capabilities at the Port of Milwaukee.

Earlier this year, the Port of Milwaukee submitted an application to the Department of Transportation Harbor Assistance program for a grant for acquisition and outfitting of the barge treatment system. However, this project would not be eligible for funding from this grant program due to cost benefit requirements and the need for identification of a 25 year life cycle funding source for the operation of the facility. To obtain a grant for the treatment barge would require an allocation of bonding authority and a special earmark for the harbor assistance program. This budget request includes \$3.5 million in general obligation bonding authority to cover the capital costs of the barge demonstration project.

The Milwaukee Ballast Water Treatment System may be a prototype for a similar system in Superior/Duluth and other Wisconsin Great Lakes ports. This could require identification of additional funds to cover capital and operation costs for additional facilities at sometime in the future probably after the 2009-2011 biennium.



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1160/1

RNK:.....

wlj

DOA:.....Miner, BB0267 - Ballast water permit fees

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

In  
12/17

Do Not Gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

✓ ENVIRONMENT

✓ WATER QUALITY

Under current law, a person who discharges certain pollutants into the waters of this state must hold a permit issued by DNR. Current law also provides that, instead of issuing a separate permit for a discharge from an individual point source, DNR may issue a general permit applicable to a designated area of the state authorizing discharges from specified categories or classes of point sources located within that area. \*

This bill authorizes DNR to issue a general permit authorizing a vessel that is 79 feet or greater in length to discharge ballast water from the vessel into waters of this state. The bill also authorizes DNR to charge specified fees for applying for and maintaining coverage under the permit. The bill requires DNR to promulgate rules that revise these fees effective on July 1, 2013. The bill provides that coverage under the general permit is valid for a period of 5 years and may be renewed. \*

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill. (59)

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 20.370 (4) (aj) of the statutes is created to read:

2           20.370 (4) (aj) *Water resources—ballast water discharge permits.* From the  
3           general fund, all moneys received from fees collected under s. 283.35 (1m) to  
4           administer and enforce the ballast water discharge permit program under s. 283.35  
5           (1m).

      \*\*\*NOTE: This SECTION involves a change in an appropriation that must be  
      reflected in the revised schedule in s. 20.005, stats.

6           **SECTION 2.** 283.35 (1m) of the statutes is created to read:

7           283.35 (1m) BALLAST WATER DISCHARGES. (a) The department may issue a  
8           general permit authorizing a vessel that is 79 feet or greater in length to discharge  
9           ballast water into the waters of the state.

10          (b) If the department issues a general permit under par. (a), <sup>the department</sup> ~~it~~ shall charge the  
11          following fees:

12          1. An application fee of \$1,200 to be paid by any person who applies for coverage  
13          under a general permit issued under this subsection.

14          2. An annual fee of \$345 to be paid upon initial coverage under the permit and  
15          annually thereafter.

16          (c) Paragraph (b) does not apply after June 30, 2013.

17          (d) On or before June 30, 2013, the department shall promulgate rules  
18          establishing application fees and annual fees for coverage under a general permit  
19          issued under this subsection. The department shall establish fees that are based on  
20          the costs to the department of controlling aquatic invasive species introduced into  
21          the waters of the state by the discharge of ballast water. The department shall  
22          charge the fees established by rule under this paragraph beginning on July 1, 2013.

1 (e) Coverage under a general permit issued under this subsection is valid for  
2 a period of 5 years. The department may renew coverage under a general permit  
3 issued under this subsection upon application.

4 (f) The department shall credit the fees collected under this subsection to the  
5 appropriation/<sup>account</sup> under s. 20.370 (4) (aj). ✓

6 (END)



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1160/1

RNK:wlj:jf

DOA:.....Miner, BB0267 - Ballast water permit fees

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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8       general permit authorizing a vessel that is 79 feet or greater in length to discharge  
9       ballast water into the waters of the state.

10       (b) If the department issues a general permit under par. (a), the department  
11       shall charge the following fees:

12       1. An application fee of \$1,200 to be paid by any person who applies for coverage  
13       under a general permit issued under this subsection.

14       2. An annual fee of \$345 to be paid upon initial coverage under the permit and  
15       annually thereafter.

16       (c) Paragraph (b) does not apply after June 30, 2013.

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21       the waters of the state by the discharge of ballast water. The department shall  
22       charge the fees established by rule under this paragraph beginning on July 1, 2013.



(e) Coverage under a general permit issued under this subsection is valid for a period of 5 years. The department may renew coverage under a general permit issued under this subsection upon application.

(f) The department shall credit the fees collected under this subsection to the appropriation account under s. 20.370 (4) (aj).

(END)